[DE] Federal Supreme Court: Heir entitled to access user's full social network account

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On 27 August 2020, the *Bundesgerichtshof* (Federal Supreme Court – BGH), the highest German civil court, decided that the operator of a social network must provide a deceased user's heir with access to the user's account. The heir must be allowed to access the account and its content in the same way as the original account holder. However, they may not actively use the account.

The case concerned a ruling of the *Landgericht Berlin* (Berlin regional court) of 17 December 2015, which had previously been confirmed by the BGH (judgment of 12 July 2018 – III ZR 183/17 – press release 115/18) and had entered into force. Under this ruling, the operator of the Facebook social network had been ordered to give the parents of a deceased user, as her heirs, access to her full account and its contents. The company had subsequently provided the user's parents with a USB stick containing a 14 000-page PDF file with a copy of the data from the user account. The BGH now had to decide whether it had met its obligation to provide access. At the request of the deceased user's mother, the regional court had fined the social network operator EUR 10 000 for only providing a USB stick. However, the appeal court had overturned this decision and dismissed a request for the company to be fined. The BGH has now reinstated the first-instance decision.

According to the BGH, the operative provisions of the first-instance decision made it clear that the heirs should not only be given access to the contents of the user account, but also the possibility to access the account itself in the same way as its original holder. The judges also referred to the grounds of the 2018 judgment, according to which the user agreement between the daughter and the network had been transferred to her heirs by universal succession. Her heirs had therefore entered into the contractual relationship and had a primary entitlement to access the account, which had not been met through the provision of a USB stick. However, they were not entitled to actively use the Facebook account and all its functionalities.

Pressemitteilung des BGH vom 9. September 2020 (Beschluss vom 27. August 2020 - III ZB 30/20)

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https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2020/2020119.html;jsessionid=AFFB2EA8B9EE21F363A68B3FAFC8D4EA.2_cid294?nn=10690868

Federal Supreme Court press release of 9 September 2020 (decision of 27 August 2020 - III ZB 30/20)

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